

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 10, 2003

D040698 People v. Roswell

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed.

D040827 In re Kevin T. et al., Juveniles

The jurisdiction and disposition orders are affirmed. Haller, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

D041106 In re Tanner V. et al., Juveniles

The petition for rehearing is granted. The dismissal order of January 15, 2003 is vacated and the appeal is reinstated. The court construes the notice of appeal to include both orders of October 22, 2002. Respondent's brief is due 30 days from the date of this order.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. E. Moore

D039333 Blanton v. Blanton

Cause called on merits. Paul E. Gavin, Esq. argued for appellant. Gary Edward Shoffner, Esq. argued for respondent. Mr. Gavin replied. Cause submitted.

D039759 Furgatch v. San Diego Unified Port District et al.

Cause called on merits. Stanley F. Zubel, Esq. argued for appellant. Douglas Jay Evertz, Esq. argued for respondent, San Diego Unified Port District. Leslie J. Girard, Deputy City Attorney was present in oral argument, and submitted on the briefs. Mr. Zubel replied. Cause submitted.

D038967 University Mechanical and Engineering Contractors, Inc., et al. v. Pinkerton's, Inc.

Cause called on merits. Denise Bragna, Esq. argued for appellant. Paul Fogel, Esq. argued for respondent, Pinkerton's, Inc. Ms. Bragna replied. Cause submitted.

Court recessed at 9:59 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D039172 Norman et al. v. Norman

Cause called on merits. Richard J. Scuba, Esq. argued for respondent. Michael Rogers, Esq. argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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February 10, 2003 (Continued)

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

D039490 Cornellison v. Julian Union High School District, et al.

Cause called on merits. Ward Benshoof, Esq. argued for appellant. Jeffrey A. Morris, Esq. argued for respondent. Mr. Benshoof replied. Cause submitted.

Court recessed at 10:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. E. Moore

D040094 Benitez v. North Coast Women's Care Medical Group, Inc., et al.

Cause called on merits. Albert C. Gross, Esq. argued for appellant, and submitted additional authorities. Gabriele Prater, Esq. argued for respondent. Mr. Gross replied. Cause submitted.

D039510 Peralta v. Hilton Hotels Corporation

Cause called on merits. Stephen B. Morris, Esq. argued for appellant. Erik S. Bliss, Esq. argued for respondent. Mark C. Hinkley replied for appellant. Cause submitted.

Court recessed at 2:28 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

D038442 Corbisez et al. v. Wal-Mart Stores, Inc.

Cause called on merits. Daniel G. Lamb, Esq. argued for appellant. Jon R. Williams, Esq. argued for respondent. Mr. Lamb replied. Cause submitted.

D036734 Schulster v. Traylor Brothers, Inc.

Cause called on merits. Mark G. Budwig, Esq. argued for appellant/cross-respondent, TBO. Greg A. McAtee, Esq. argued for appellant/cross-respondent, City of San Diego. Glenn Douglas Dasso, Esq. argued for respondent, Schulster and etc. Mr. Budwig replied. Mr. McAtee replied. Robert L. Zajac, Esq. was present in oral argument, but did not argue. Michael R. McGuinness, Deputy City Attorney was present in oral argument, but did not argue. Cause submitted.

Court adjourned at 4:40 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D041412 Rhonda A. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner John A. has notified the court on behalf of the petitioner that a petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D041534 Alberto C. v. Superior Court of San Diego County/Anmarie D. et al.

Let a writ issue directing the juvenile court to vacate its November 21, 2002 order denying Alberto's request for presumed father status and schedule further hearings in the matter. This opinion is made final immediately as to this court. (Cal Rules of Court, rule 24(d).) Haller, J.; We Concur: Kremer, P.J., McIntyre, J.

D040134 In re Daisy E., a Juvenile

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., McIntyre, J.

D041222 In re Anmarie D., a Juvenile

The appeal is dismissed as moot in light of the disposition in the companion writ proceeding.

D038491 Sprague et al. v. County of San Diego

The opinion filed on January 21, 2003, is modified and certified for publication. No change in judgment.

D039615 Save Our NTC, Inc. v. City of San Diego et al.

It is ordered that the opinion filed January 14, 2003 is modified. There is no change in the judgment. The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 11, 2003

Court convened at 9 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke
Clerk: D. E. Moore

D039865 Davis et al. v. City of San Diego et al.

D039093 Davis et al. v. City of San Diego et al.

Causes called on merits. Everett L. Bobbitt, Esq. was present in oral argument for respondent, and submitted on the briefs. Michael Rivo, Esq. was present in oral argument for appellant, and submitted on the briefs. Cause submitted as to D039865 ONLY.

D039849 Encinitas Country Day School, Inc., et al. v. City of Encinitas

Cause called on merits. Mark J. Dillon, Esq. argued for appellant. Randal R. Morrison, Esq. argued for respondent. Mr. Dillon replied. Cause submitted.

D039129 Mendoza v. Lane et al.

Cause called on merits. Elaine Snyder, Esq. argued for respondent, Dunnum. Katherine T. Weadock, Esq. argued for respondent, Lane. Joe Mendoza replied for appellant in pro per. Cause submitted.

D039150 Hedrick v. Hedrick

Cause called on merits. Robert Hedrick argued for appellant in pro per. No appearance by Patsy Hedrick, respondent in pro per. Cause submitted.

Court recessed at 10:07 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Judith McConnell
Clerk: D. E. Moore

D039201 Howard v. John Hancock Mutual Life Insurance Company

Cause called on merits. Kathryn E. Karcher, Esq. argued for respondent. Richard Howard, argued for appellant in pro per. Cause submitted.

D039045 Giannelli v. San Diego Trolley, Inc.

Cause called on merits. No appearance by appellant's counsel. Robert R. Heft, Esq. argued for respondent. Cause submitted.

Court recessed at 1:48 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

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D039148 People v. McLaughlin

Cause called on merits. Carl Hancock, Esq. argued for appellant, and submitted additional authorities. Steve Oetting, Deputy Attorney General argued for respondent. Mr. Hancock replied. Cause submitted.

D039317 Quini v. Paradise Valley Hospital

Cause called on merits. Thor O. Emblem, Esq. argued for appellant. Cary W. Miller, Esq. argued for respondent. Mr. Emblem replied. Cause submitted.

Court recessed at 2:33 p.m. until Thursday, February 13, 2003 at 9 a.m.

D041369 In re Quillar on Habeas Corpus

The petition is denied.

D041250 Melody P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: Kremer, P.J., Haller, J.

D041136 In re Sharay M., a Juvenile

The motion to consolidate D041129 and D041136 is denied. The motion to dismiss the appeal is D041136 is granted. The request by de facto parent Lucille S. for permission to file a supplemental writ petition is granted. The supplemental petition is to be filed no later than February 13, 2003. The response is due within rule time after the supplemental petition is filed.

D038812 People v. Miranda

The manslaughter and child abuse convictions are affirmed. The sentence is modified to seven years: the four-year middle term for manslaughter enhanced three years for infliction of great bodily injury. The sentence for child abuse is stayed (sec. 654.). The trial court shall advise the Department of Corrections of the modification. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D041364 In re Anthony W. on Habeas Corpus

The petition is denied.

D039767 People v. Felix

The convictions of carjacking and taking or knowingly driving a stolen vehicle are affirmed. The conviction of receiving stolen property is reversed. The superior court shall modify the judgment and advise the Department of Corrections of the modification. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

D041102 Ronnie M. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The mother's petition is denied. As to the father's petition, let a writ issue directing the juvenile court to vacate its order setting a section 366.26 hearing and directing the juvenile court to conduct further hearings consistent with this opinion. This opinion is final immediately as to this court. (Rule 24(d).) McIntyre, J.; We Concur: Kremer, P.J., Haller, J.

D041373 In re Villasenor on Habeas Corpus

The petition is denied.

D038240 In re the Marriage of Bourgoin

The order is affirmed. Kremer, P.J.; We Concur: Benke, J., McConnell, J.

D041078 Bret V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: Kremer, P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 13, 2003

D041130 People v. Christopher

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. E. Moore

D039749 Horton v. San Diego Unified School District

Cause called on merits. Willie Horton, argued telephonically for appellant in pro per. Roberta Ruth Sistos, Esq. argued for respondent. Mr. Horton replied. Cause submitted.

D038414 Smith v. Hawthorne Machinery Company et al.

Cause called on merits. Mark Gloven, Esq. argued for appellant. Eugene P. Kenny, Esq. argued for respondent. Mr. Gloven replied. Cause submitted.

D037614 Kitchin v. Schwartz

Cause called on merits. Steven M. Schwartz, argued for appellant in pro per. Elizabeth Brady, Esq. was present in oral argument for respondent, and submitted on the briefs. Cause submitted.

D038024 Mitchell v. Shain

Cause called on merits. Nancy Mitchell, argued for appellant in pro per. Hugh McCabe, Esq. argued for respondent. Ms. Mitchell replied. Cause submitted.

D039013 Cellier v. Citroen Concours et al.

Cause called on merits. Jennifer Hegemier, Esq. argued for appellant. Janis L. Turner, Esq. argued for respondent. Ms. Hegemier replied. Cause submitted.

D039602 San Diego Electrical Health & Welfare Trust v. Doyle

Cause called on merits. Melissa Cook, Esq. argued for appellant. Donald Mitchell DeCamara, Esq. argued for respondent. Ms. Cook replied. Cause submitted.

Court recessed at 10:58 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron
Clerk: D. E. Moore

D038991 Autopawn of San Diego, Inc. v. Hoodneh

Cause called on merits. Paul K. Fine, Esq. argued for appellant. James P. O'Neil, Esq. argued for respondent, Wasserman and etc. Steven L. Victor, Esq. argued for respondent, Autopawn of San Diego, Inc., and etc. Mr. Fine replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court recessed at 1:56 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D039360 Sabul v. Pillsbury Winthrop LLP, et al.

Cause called on merits. Bradley Jacobs, Esq. argued for appellant. John M. Grenfell, Esq. argued for respondent. Mr. Jacobs replied. Cause submitted.

Court recessed at 2:25 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke

D039242 Grubaugh et al. v. Tri-City Healthcare District

Cause called on merits. Gregory James Testa, Esq. argued for appellant. Martha L. McGill, Esq. argued for respondent. Mr. Testa replied. Cause submitted.

D038170) Swann v. Daimlerchrysler Motors Corporation

D039277) Swann v. Daimlerchrysler Corporation

Cause called on merits. John Taylor, Esq. argued for appellant. Douglas D. Guy, Esq. was present in oral argument for appellant, but did not argue. David A. Kay, Esq. argued for respondent. Mr. Taylor replied. Cause submitted.

D039025 Chronowski v. Topolnicki

Cause called on merits. Cheryl Edward Tannenberg, Esq. argued for appellant. Steele N. Gillaspey, Esq. argued for respondent. Ms. Tannenberg replied. Cause submitted.

Court recessed at 3:45 p.m. until Friday, February 14, 2003 at 9 a.m.

D041544 Sabul v Lugar

The petition is denied.

D041360 Mauro P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

By failing to file a timely petition for writ relief, the notice of intent is deemed to be abandoned. The case is dismissed.

D038931 North American Collectors, Inc. v. Luxor Dairy Corp., et al.

The judgment is affirmed. Appellant to pay costs on appeal. O'Rourke, J.; We Concur: Huffman, Acting P.J., Nares, J.

D039536 Casa De Amicos v. Rady

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
February 14, 2003

D039172 Norman, an Incompetent Person, et al., v. Norman

Respondent Doris Jeanne Norman's motion to dismiss the appeal filed by Appellants Donald E. Norman, an incompetent by Douglas E. Norman, his guardian ad litem; Douglas E. Norman, individually and as trustee of the Don E. Norman Trust Agreement of May 6, 1992; and CLARINCO, INC., is granted. Appellants agreed to be bound by the trial court's determination that the stipulated judgment it signed and entered comported with the terms of the parties' agreement recited in open court. The challenged presumption clause was determined by the court to be in substantial conformity with the parties agreement and included in the Judgment on Stipulation. An appeal challenging such clause included in a judgment based on a stipulation of the parties as part of a settlement is not appealable. (Papadakis v. Zelis (1991) 230 Cal.App.3d 1385, 1387.)

Further, respondent's request for sanctions on this motion for a frivolous appeal is also granted. Because no reasonable attorney would have pursued this appeal to challenge terms in a stipulated judgment which a client has agreed would be included if the trial court determined they were in conformity with the parties settlement after reading the transcript of such agreement, sanctions are proper. (Code of Civ. Proc., 907; Cal. Rules of Court, rule 27(e)(A); in re Marriage of Flaherty (1982) 31 Cal.3d 637, 654.) as noted in Papadakis, sanctions are clearly appropriate for filing of a frivolous appeal where a party "cannot appeal from a judgment to which he previously stipulated as part of a settlement between the parties". (Papadakis v. Zelis, supra, 230 Cal.App.3d at p. 1387.)

Based on the record and oral argument, an amount of \$995 would appear to reasonably compensate respondent for her expenses in responding to this frivolous appeal and motion to dismiss. Therefore, appellant Douglas E. Norman and his attorney Michael Rogers are personally assessed sanctions for a frivolous appeal, payable to respondent forthwith, in the amount of \$995. No assets of Donald E. Norman, in any form or entity, are to be used to satisfy the award of sanctions.

D041621 People v. Superior Court of San Diego County/Tuite

The petition is denied.

D041570 Speaker et al. v. Superior Court of San Diego County/Davi et al.

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Judith McConnell

Clerk: D. E. Moore

D039153 Amerifloor Technical, Inc. v. The Travelers Indemnity Company of Illinois

Cause called on merits. Kevin T. Cauley, Esq. argued for appellant. Timothy Stone, Esq. argued for respondent. Mr. Cauley replied. Cause submitted.

D038980 Gutierrez v. Beck

Cause called on merits. Thomas W. Byron, Esq. argued for appellant. Robert J. Mulcahy, Deputy City Attorney argued for respondent. Dan Zeidman, Esq. argued for respondent, Gutierrez. Mr. Byron replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
February 14, 2003 (Continued)

D039417 Schwartz v. Muller

Cause called on merits. Leon E. Campbell, Esq. argued for appellant. Shaun K. Boss, Esq. argued for respondent. Mr. Campbell replied. Cause submitted.

Court recessed at 10:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith McConnell and Cynthia Aaron
Clerk: D. E. Moore

D038659 Collins et al. v. Afshar

Cause called on merits. Khodadad Darius Sharif, Esq. argued for appellant. Anthony Michael Solis, Esq. argued for respondent. Mr. Sharif replied. Cause submitted.

D039254 Pick etc., et al. v. City of San Diego

Cause called on merits. Michael H. Riney, Esq. argued for appellant. Leslie A. Fitzgerald, Deputy City Attorney argued for respondent. Mr. Riney replied. Cause submitted.

Court recessed at 2:38 p.m. until Tuesday, February 18, 2003 at 9 a.m.